The courts below correctly disposed of these claims in accordance with well settled precedents presenting no substantial question for this court. Thus, as we shall show:

(1) since Congress, acting under its conceded authority, clearly legislated to permit the importation of metallurgical chromite and other "strategic and critical" materials from Rhodesia, the importation of chromite challenged here presents no substantial question of law warranting decision by this Court; and

(2) moreover, the Court of Appeals correctly held that the Judiciary should not intrude into the intricate and important foreign policy decisions made by the Executive in connection with the Byrd Amendment.

I. Since Congress, Acting Under Its Conceded Authority, Clearly Legislated To Permit the Importation of Metallurgical Chromite and Other "Strategic and Critical" Materials from Rhodesia, the Importation of Chromite Challenged Here Presents No Substantial Question of Law Warranting Decision by this Court.

This Court's decisions clearly establish the constitutional power of Congress to enact legislation superseding the inconsistent provisions of prior treaties. *Moser* v. *United States,* 341 U.S. 41, 45 (1951); *Clark* v. *Allen,* 331 U.S. 503, 508-09 (1947); *Pigeon River Co.* v. *Cox,* 291 U.S. 138, 160 (1934); *Stephens* v. *Cherokee Nation,* 174 U.S. 445, 483-84 (1899); *Whitney* v. *Robertson,* 124 U.S. 190, 194 (1888); *Edye* v. *Robertson (Head Money Cases),* 112 U.S. 580, 597-99 (1884). In short, treaties are "placed upon the same footing, and made of like obligation, with an act of legislation... and *no superior efficacy is given to either over the*

other." Whitney v. *Robertson,* 124 U.S. 190, 194 (1888) (emphasis added).

Viewed in light of this principle, the case becomes a routine and simple exercise in statutory construction, with the Congressional purpose so clear that no substantial question is presented, let alone one warranting review by this Court.

First, the United Nations Charter—the treaty involved here—has no greater legal effect on subsequent legislation than any other treaty. The history of the ratification of the Charter establishes, as Senator Lucas stated at the time, that the Senate believed it was "in the midst of the ratification of a treaty according to the Constitutional requirement of a two-thirds vote. Certainly no one will disagree that this is a treaty. No one is proceeding upon any other theory." 91 Cong. Rec. 8021 (1945). Thus, as was stated more bluntly by Senator Connally, Chairman of the Foreign Relations Committee, during the debate on ratification, "we always have the power to violate a treaty if we want to violate it." 91 Cong. Rec. 7987 (1945).

Second, the Byrd Amendment on its face clearly forbids an embargo on "strategic and critical" materials from Rhodesia, or any other non-Communist country, so long as the same materials may be imported from any Communist country. The statutory language simply forbids full adherence to the United Nations Rhodesian Sanctions and mandates the Executive to permit imports of metallurgical chromite and other "strategic and critical" materials from Rhodesia, unless it takes affirmative actions which admittedly have not been taken.

The legislative history confirms this literal reading of the statute, and shows that Congress considered but rejected the argument that the United Nations Charter should override the nation's need for Rhodesian chromite. Addendum A demonstrates that throughout the legislative process, both the Amendment's supporters and its opponents admitted, in the words of petitioner Congressman Diggs, that it would "permit the importation of Rhodesian chrome contrary to U.N. sanctions against Southern Rhodesia...." 117 Cong. Rec. E 10235 (Sept. 29, 1971). And as this Court has stated, "[i]t is not for us to so construe the Acts as to frustrate [the] clear-cut purpose so forcefully expressed by both friend and foe of the legislation at the time of its adoption." *First National Bank* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966).

Nor did the Executive have trouble understanding the clear intent of Congress that unless certain preconditions were met, it could no longer forbid the importation of Rhodesian chromite. Sommerfield Affidavit ¶ 2, Addendum B at 23a; 31 C.F.R. § 530.518 ("General License"). Indeed, the petitioners' contention that the Byrd Amendment left the President with the "option" of continuing the embargo by banning imports from all Communist countries, including the Soviet Union (Pet. 19), is an admission that the Executive's reading of the statute was correct, despite petitioners' disappointment that the President did not choose the "option" they prefer.

Finally, the action of both Houses of Congress in defeating attempts to repeal or modify the Byrd Amendment after the Executive interpreted the statute in its "General License" indicates that it approved that reading of the statutory language. *Cf. Flood* v.

Kuhn, 407 U.S. 258, 283-84 (1972), *Toolson* v. *New York Yankees*, 346 U.S. 356, 357 (1953).

In sum, the Byrd Amendment clearly was intended to and did end the embargo on importation of Rhodesian chromite and other "strategic and critical" materials pursuant to the authority of Congress to regulate foreign commerce, and to enact legislation inconsistent with prior treaties. Thus, the supposed "questions of the allocation of power to abrogate or breach obligations of the United States to the United Nations" asserted by petitioners (Pet. 18), or the canon of statutory construction that courts will, *when in doubt*, construe an unclear statute in order to preserve provisions of a prior treaty, are simply not presented by this case.

II. Moreover, the Court of Appeals Correctly Held that the Judiciary Should Not Intrude into the Intricate and Important Foreign Policy Decisions Made by the Executive in Connection with the Byrd Amendment.

As shown above, since metallurgical chromite is classified as a "strategic and critical" material, and its importation from the Soviet Union and other communist countries is not banned, the Byrd Amendment requires the President to permit its importation from Rhodesia.

Confronted by this manifest meaning of the statutory language, petitioners do not seriously press before this Court their five tortured readings of the statute summarily rejected by the Courts below. Instead, they maintain that this Court should order the President to exercise "options left to him under the legislation which would not have involved a breach of treaty." Pet. 19.

The Court of Appeals expressly rejected two of these "options," *i.e.*, banning imports from all Communist countries, including the Soviet Union, and arbitrarily and unlawfully removing chromite from the list of "strategic and critical" materials. As the Court of Appeals recognized, the "so-called options given to the President are, in reality, not options at all. In any event, they are in neither case alternatives which are appropriately to be forced upon him by a court." Pet. 55a.[3]

For as the Court of Appeals realized, "these alternatives raise questions of foreign policy and national defense as sensitive as those involved in the decision to honor or abrogate our treaty obligations." Pet. 54a.

The Court of Appeals was obviously correct. There is no legal basis presented here for a court to order the Executive Branch to remove metallurgical chromite from the list of materials classified as "strategic and

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[3] Petitioners here suggest two additional "options" (Pet. 19, fn):

First, they suggest the President could have adopted one of the five strained constructions of the statute offered by petitioners in their complaint. But none of these readings of the statutory language even received serious consideration by either court below, so strongly does the statutory language and legislative history negate them.

Second, petitioners suggest that this country petition the Security Council under Article 50 of the U.N. Charter for consideration of "special economic problems" arising out of continued adherence to the Rhodesian embargo. But the same reasons arguing against judicial review of the President's refusal to ban chromite imports from the Soviet Union (*see infra* at 14-15) apply equally to this "option." No United States domestic court should presume to direct the President to undertake such a course of action. Moreover, any suggestion that such a course must be taken before complying with domestic legislation assumes that the U.N. Charter has some kind of "super-Constitutional" force, which it does not.

critical" under the provisions of the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. §§ 98-98h.[4]

Nor should any court breach the separation of powers doctrine by ordering the President to forbid chromite imports from the Soviet Union.[5] This Court has often held that the Judiciary should not interfere with the President's broad Constitutional authority over delicate questions of foreign policy. *See, e.g., Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 ("the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the gov-

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[4] As the Court of Appeals recognized, the

> "decision to remove certain materials from the critical and strategic list should be done in a manner consistent with the objectives of that act. 50 U.S.C. § 98. Appellants' view would require reclassification of materials without regard to whether they continue to be critical to national defense. Appellants argue that the apparent surplus in the stockpile indicates the materials are no longer critical. This confuses two distinct functions under the act. One is classification of materials as strategic or critical in order to encourage their development in this country and to avoid dangerous dependency upon other nations. The other is the acquisition of certain quantities of these materials to be stockpiled for use in an emergency. A surplus in the stock pile at a given moment does not mean that it is no longer necessary to be concerned about the dependency of this country on outside sources for the materials in question." Pet. 54a, n. 5.

[5] Prior to the direction to respondent Sommerfield to issue the "General License," Administration officials were quoted in the press as indicating that the President considered "the feasibility of effectively continuing the ban [on Rhodesian chromite] by blocking imports from the Soviet Union and other Communist countries." The New York Times, Nov. 18, 1971, p. 13, col. 1. Apparently the President rejected this alternative.

ernment"); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936) (referring to "the very delicate, plenary and *exclusive* power of the President as the *sole organ* of the Federal government in the field of international relations") (emphasis added).

Particularly pertinent here, courts have uniformly refused to review Presidential orders under the Trading with the Enemy Act, 50 U.S.C. App. § 5, the only statutory provision under which the President could ban Communist imports as petitioners propose. *Sardino* v. *Federal Reserve Bank of New York*, 361 F.2d 106, 109 (2d Cir.), *cert. denied*, 385 U.S. 898 (1966) ("courts will not review a determination so peculiarly within the province of the chief executive"); *Nielsen* v. *Secretary of Treasury*, 424 F.2d 833, 839 (D.C. Cir. 1970); *Welch* v. *Kennedy*, 319 F.Supp. 945, 948 (D.D.C. 1970).

Thus, so long as the Congress agrees with the President's exercise of the foreign commerce powers it has delegated to him, as limited by the Byrd Amendment, the Judicial Branch of the Government should not interfere. *United States* v. *Curtiss-Wright Export Corp., supra; Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302 (1918) ("The conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—'the political'—departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision").

The decision of the Court of Appeals not to inquire into the President's exercise of his foreign policy and national defense powers was manifestly correct.

CONCLUSION

As we have shown, the decision of the Court of Appeals is clearly correct. The Congress, pursuant to its manifest authority, clearly intended to and did legislate to permit the importation of Rhodesian metallurgical chromite and other "strategical and critical materials," and the President has exercised his discretion within the limits set by law.

Realistically viewed, this case is simply an attempt by petitioners to raise in a judicial forum factual and policy issues which Congress decided against them in passing the Byrd Amendment and rejecting later attempts to repeal or modify it.

As a result, the petition for certiorari presents no important question of law to this Court, and should therefore be denied.

Respectfully submitted,

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February 26, 1973

ADDENDUM A

LEGISLATIVE HISTORY OF THE BYRD AMENDMENT

The provision which ultimately became the "Byrd Amendment" to the Military Procurement Act of 1971 was originally introduced in the Senate by Senator Byrd on March 29, 1971, as S.1404.[1] As originally introduced, the bill read as follows:

> "A BILL TO amend the United Nations Participation Act of 1945 to prevent the imposition thereunder of any prohibition on the importation into the United States of any strategic and critical material from any free world country for so long as the importation of like material from any Communist country is not prohibited by law
>
> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)) is

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[1] Identical legislation was introduced in the House by Representative Collins of Texas as H.R. 5445. In describing his bill, Congressman Collins stated that "it impartially states that if we buy a strategic critical material from *any* Communist country, that we should also be entitled to import critical material from any free country in the world." He further stated that "*chromium is on America's list of vital strategic raw materials*" and made clear that one of the objectives of his bill was that "the United States would again have adequate chromium ore and would no longer be faced with a critical raw material shortage that is so important to our national defense." *Economic Sanctions Against Rhodesia, Hearings on H.R.J. Res. 172, H.R. Con. Res. 5, 6, 12, H.R. Res. 45 and H.R. 5445 Before the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs,* 92d Cong., 1st Sess. 44-46 (1971) [hereinafter cited as "*House Hearings*"]. Unless otherwise indicated, all emphasis herein is supplied.

amended by adding at the end thereof the following new sentence: "On or after the effective date of this sentence, the President may not prohibit or regulate the importation into the United States pursuant to this section of any material determined to be strategic and critical pursuant to section 2 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a), which is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law." 117 Cong. Rec. S 3995 (Mar. 29, 1971).

A. *Statement of Sponsor*

In introducing the bill, Senator Byrd stated:

"Mr. President, I am today introducing legislation aimed at ending the dependence of the United States upon the Soviet Union for its supply of chrome ore—a material vital to national defense.

"The United States is now facing a critical shortage of chrome, which is essential to the manufacture of stainless steel. Jet aircraft and missiles are among the items vital to defense which make use of chrome.

"Our current situation is the result of American participation in United Nations economic sanctions against Rhodesia, the small African country which is the world's richest source of chrome.

"The U.N. sanctions were imposed after Rhodesia declared her independence from Great Britain. Rhodesia was labeled a 'threat to international peace and security'—a ridiculous charge.

"Unfortunately, the United States actively supported the embargo against Rhodesia. Since the first sanctions in 1966, the United Nations has twice tried to strangle Rhodesia with an even tighter boycott, each time actively supported by the United States.

"These measures have not worked. *The embargo policy is a failure. Rhodesian trade actually is increasing.*

"Yet the United States persists in supporting the unethical U.N. sanctions, even though all Rhodesia has done is to declare her independence from Great Britain —a step the American colonies took in 1776.

"It is today a criminal offense for any American to engage in trade with Rhodesia.

"Now this situation would be bad enough if it were just a question of international law and relations between nations. Former Secretary of State Dean Acheson has called the U.N. action against Rhodesia 'barefaced aggression, unprovoked and unjustified by a single legal or moral principle.'

"I concur.

"But more than legal and moral principle is involved.

"Before the U.N. sanctions were imposed, Rhodesia supplied the United States with most of its chrome ore.

"With the embargo in effect, the United States has had to turn to the Soviet Union for chrome. Sixty percent of the chrome we are using comes from Russia.

"*The Russians have taken advantage of a monopoly situation and have more than doubled the price of the chrome ore they export to the United States.*

"But even more serious is the fact that we are dependent on the favor of the Russians for a strategic material.

"The administration has requested that Congress pass a bill permitting withdrawal of 30 percent of the present supply of chrome in the Nation's reserve stockpile.

"This would temporarily meet our needs, in combination with Russian chrome. But it is only a stopgap measure, for at this rate we would exhaust our stockpile in a little over 3 years.

"To my mind, it is totally illogical for the United States to depend upon Russia for a strategically important commodity.

"*The legislation I am introducing today would enable us to end this dependency upon the Soviet Union.*

"*Under my proposal, the President could not ban imports of a strategic material from a free world country if the importation of the same material is permitted from a Communist-dominated country.* That seems logical to me.

"Now technically, the administration could meet the requirements of this legislation by banning all chrome imports. But then of course there would be far too little ore for even the most elementary needs of the United States.

"Therefore, the United States would have to end its participation in the U.N. sanctions against Rhodesia, insofar as chrome is concerned.

"It would be my hope that the administration would drop all sanctions against Rhodesia. That would be the proper course to take.

"But even if this course were not taken, at least the United States would end its reliance upon the Soviet Union for strategically vital chrome ore.

"Legislation similar to mine has been introduced in the House of Representatives by Representative COLLINS of Texas. I hope that the Congress will take prompt action to change the absurd and dangerous position in which the United States now finds itself.

"Mr. President, I send to the desk proposed legislation to accomplish this purpose, and I ask unanimous consent that the text of the bill be printed at this point in the RECORD." 117 Cong. Rec. S 3994-95 (Mar. 29, 1971).

Subsequently, on April 29, 1971, Senator Cannon also stated his understanding that S.1404 would, if enacted, "*exempt chrome ore from the list of materials subject to the Rhodesian embargo* and thus end our dependency upon the Soviet Union for this highly important commodity." 117 Cong. Rec. S 5905 (Apr. 29, 1971).

B. *Senate Hearings*

Hearings on S.1404 were held before the Senate Committee on Foreign Relations on July 7 and 8, 1971. (The report of these hearings, entitled *U.S. Sanctions Against Rhodesia—Chrome, Hearings on S. 1404 Before the Senate Committee on Foreign Relations,* 92d Cong., 1st Sess., is hereafter cited as "*Senate Hearings*").

In these hearings, both opponents and proponents of S.1404 agreed that the major purpose of the proposed legislation was to override the Executive Orders issued under authority of the United Nations Participation Act, which prohibited imports from Rhodesia so as to permit the importation of Rhodesian chrome.

For example, Senator Byrd, supporting the bill, stated that it would "provide that the President could not prohibit imports of a strategic material from a free world country as long as the importation of the same material is permitted

from *a Communist-dominated country.*" [2] *Senate Hearings* at 2, *see also id.* at 7. He specifically recognized that the President had imposed the embargo "under the United Nations Participation Act" and suggested "that the Congress has a right, as I see it, to review his action, and has a right, as I see it, to adopt legislation such as I am suggesting... [which would] cease our dependence upon the Soviet Union for a metal vital to our national defense." *Id.* at 7-8.

David D. Newsom, Assistant Secretary of State for African Affairs, opposed the legislation, stating:

> "This proposed amendment to the United Nations Participation Act, whatever its intent, *would have the effect of invalidating the existing embargo on chrome ore imports from Southern Rhodesia so long as such imports are not prohibited from the Soviet Union or other Communist countries.*" *Id.* at 14-15.

Having pointed out that the embargo had been imposed by the President "under the United Nations Participation Act of 1945 which provides authority for domestic enforcement of U.N. sanctions" (*Id.* at 12, *see also id.* at 17), Newsom suggested that S.1404 was "contrary to U.S. policy interests" since it would "call into serious question our will to fulfill our international obligations." *Id.* at 15. He also stated, however, that "were the chrome situation indeed critical, we, too, would seek measures of relief." *Id.*

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[2] The Senate Hearings, Senate Debates, Conference Report and House Debate contain numerous statements indicating the understanding of all concerned that the Byrd Amendment would operate to permit the importation of a strategic material from Rhodesia whenever importation of the same material was permitted from "a" or "any" Communist country. In addition to such statements specifically mentioned in the text throughout this discussion, there are additional references throughout the legislative history.

Nowhere did Newsom or any other opposing witness suggest that Congress lacked constitutional power to pass legislation ending U.S. participation in the embargo.

As summed up by Senator McGee, Mr. Newsom's testimony was that "our dependence on the Soviets for chrome is marginal at best"[3] and that certain negotiations between the British government and the Rhodesian government "could be materially affected, perhaps adversely, by precipitous enactment of the proposed legislation . . . ." *Id.* at 20.

The Honorable Charles E. Diggs, Congressman from Michigan, and a plaintiff in this action, also appeared before the Senate Foreign Relations Committee to oppose the bill. He stated his understanding that

> "*The sole effect of this bill would be to end the so-called embargo against importation of chrome from Southern Rhodesia,* and I am appearing today to emphasize that such an objective would not only place us in violation of our international obligations under the Charter of the United Nations but it would be disastrous to our foreign policy interests in black Africa." *Id.* at 77-78.

Other witnesses clearly recognized that the purpose and effect of the bill was to authorize the importation of Rhodesian chrome. *See, e.g.,* testimony of Dean Acheson, E. F.

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[3] On the issue of world supplies of metallurgical chrome, the *Senate Hearings* (at 58, 94) contain several tables showing reserves. None of these tables shows reserves in Cuba. Nowhere in the hearings, debates, or Conference Report was Cuba mentioned as a source of supply. Moreover, Cuban production of chromite is "believed to have completely ceased." Roskill Information Services, Ltd., *Chromium Minerals, Ferro-Chrome, Chromium and Chromium Chemicals: World Survey of Production and Consumption with Special Reference to Future Demand and Prices* 23 (London, Jan. 1972).

Andrews, L. G. Bliss, *Senate Hearings* at 37-40, 86-91, 4, 49-57; *see also* Statement of Senator Brooke, *id.* at 103-03-04; Statement of Fred C. Kroft, Jr., President, Ferroalloyloys Division, Union Carbide Corp., *id.* at 107.

Also, with respect to the question of whether S.1404 wd was intended to end import restrictions if the importation on of any strategic and critical material was permitted from "ı "a" or "any" Communist country, Senators Byrd and McIcGee had the following exchange:

> Senator McGee: " . . . as Senator Byrd said yesterderday in his testimony, this bill contemplates reversal of of the President's current authority to prohibit importsrts of chromite from Rhodesia. In effect this legislatlation would only give that authority to the President if cc comparable restrictions were placed on like material al imported from any Communist-dominated countrtry." *Senate Hearings* at 49.
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> Senator Byrd: " . . . first, I would like to put in a lit little different perspective if I may, the Chairman's openening statement. I think he put a slightly different twistist on my testimony and on the precise meaning of the leg legislation I had introduced, unintentionally, I know, w, but let me read just for the record . . . the Chairmaman's statement and then put what I consider a more pe precise meaning on it, if I may."
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> • • •
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> [Senator McGee's opening statement quoted above ve was re-read.]
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> "Now to put it in a more precise context I would phrphrase it this way: *this legislation simply provides that at the President could not prohibit imports of a strateategic material from a free world country if importationion of the same material is permitted from a Commumunist dominated country.* The Chairman's statement is is not inaccurate at all, but I think it puts a slightly differferent

twist on the legislation. I know that he would want to have the interpretation put on it that the sponsor of the legislation is putting on it. That is the reason I wanted to read that into the record."

Senator McGee: " . . . It is important that the record show that there was no twist that was intended." *Senate Hearings* at 74-75.

C. *Senate Committee Report*

The Senate Foreign Relations Committee did not report out S.1404. However, on September 7, 1971, the Committee on Armed Services, of which Senator Byrd was a member, reported out its amended version of H.R. 8687, authorizing appropriations for fiscal year 1972 for military procurement. S. Rep. No. 92-359, 92d Cong., 1st Sess. (1971).

As reported, this bill contained in Section 503 language identical to that of S.1404. With respect to this proposal, the Committee Report stated:

"Section 503 would amend the President's powers under the United Nations Participation Act so that he could not prohibit imports of critical and strategic materials from any non-Communist nation as long as the importation of the same materials from Communist dominated nations is not prohibited by law.

"The Amendment would, under present circumstances, have the effect of allowing imports of chrome ore from Rhodesia since imports from Russia, in calendar year 1970, amount of 60% of U.S. needs." S. Rep. No. 92-359, 92d Cong., 1st Sess. 121 (1971).

D. *Senate Floor Action*

On September 10, 1971, Senator Byrd, in anticipation of State Department efforts to eliminate the section, discussed the bill:

"The purpose of that section is to end the dependence of the United States on the Soviet Union for chrome ore, a material vital to the defense of this country."

His remarks make clear that to accomplish this purpose Section 503 was intended to override in part prior Executive Orders implementing U.N. sanctions against Rhodesia. 117 Cong. Rec. S 14102 (Sept. 10, 1971).

On September 29, Congressman Diggs inserted in the Congressional Record a letter which he had sent to the Secretary of State urging opposition to the Byrd Amendment, which, as he described it, "would, by amending Section 5 of the United Nations Participation Act to permit the importation of Rhodesian chrome contrary to U.N. sanctions against Southern Rhodesia, place the United States in violation of its treaty obligations under the U.N. Charter and seriously erode our foreign policy position vis-a-vis Africa." 117 Cong. Rec. E 10235 (Sept. 29, 1971). He also inserted in the Record a "Telegram to the President from the Black Caucus" stating their understanding of the Byrd Amendment in similar terms. *Id.* at E 10235-36. Congressman Diggs also wrote to all Senators, calling their attention "especially to *Section 503 of the bill, which will end the embargo against importation of chrome from Southern Rhodesia,*" attaching a copy of his testimony before the Senate Committee on Foreign Relations on S.1404, and urging support of the Fulbright Amendment (discussed below), which would have empowered the President to override the Byrd Amendment. *Id.* at 10236.

On the Senate floor, Senator McGee on September 23, 1971, offered an amendment which would have struck Section 503 (the Byrd Amendment) from the Military Procurement bill. In arguing for his amendment, Senator McGee stated:

> "*I am sure that most of the Members of this body are aware that the language of section 503 is specifically designed to have the United States unilaterally break the United Nations embargo against Rhodesia and to import chrome ore from that area.* That is really the

substance and thrust contained in the proposal." 117 Cong. Rec. S 14933 (Sept. 23, 1971).

Extended debate followed, which is reported at 117 Cong. Rec. S 14933-46. Summing up the debate, Senator Stennis, Chairman of the Armed Services Committee, said, *inter alia:*

"We do need the ore. We do not have too much in the stockpile. We absolutely ought not to be cut off from virtually all our supply of the ore and have that supply limited.

* * *

"We have this stockpile. The Committee recommended unanimously against letting it go. We are cut off from the supply in this situation." *Id.* at S 14946.

Senator Stennis also alluded to the sharp increase of price in Russian chrome ore and concluded that:

"After all these matters are weighed, we are left with the Soviet nation as the principal source of supply. That is contrary to everything we have been trying to do through the years.

"Mr. President, I hope we can keep this provision in the bill." *Id.*

Senator McGee, in opposition, questioned the need for chromium imports, asserted that the stockpile was "adequate" and "not an issue in this matter," suggested that Section 503 would make the United States "the only nation to formally repudiate a United Nations sanctioned agreement," and urged that the Senate accept the pending amendment to strike the Section. *Id.*

On a roll call vote, Senator McGee's amendment was defeated 46 to 36. *Id.* at S 14947.

The Byrd Amendment was again the subject of Senate debate after Senator Fulbright introduced a further amend-

ment to the Military Procurement bill which would have made Section 503 subject to the President's right to override it if he determined that "the national interest or a treaty obligation of the United States" so required and informed Congress of his determination. 117 Cong. Rec. S 15115 (Sept. 27, 1971). Senator Fulbright, on introducing this amendment, remarked, *inter alia,* that it

> "has an effect similar to the McGee amendment. The McGee amendment struck this provision. [Section 503.] All this does is, in order to change it a bit and also, I hope, to make it more palatable for some of those who would vote against the motion to strike the provision relating to Rhodesia, is to give the President the option to determine whether it is in the national interest or whether a treaty obligation requires him to abide by the embargo which was voted on and approved by the United Nations." *Id.* at S 15116.

Debate on Senator Fulbright's amendment occurred in the Senate on September 30, 1971. *See* 117 Cong. Rec. S 15584-94.

Among the points made on both sides were the dependence on Russia for vital defense material, the extortionate price of Russian chrome, the small government stockpile of chrome ore that could be depleted in a couple of years, the undermining of the British negotiations with Rhodesia and of the United Nations embargo, and the delegation of power by Congress to the President.

In the debate, Senator Allen stated his understanding of Section 503 as providing

> "that the President of the United States *may not prohibit imports of a strategic material from a free world country so long as the importation of the same material is permitted from a Communist dominated country. Chrome is such a material.* Communist Russia and independent Rhodesia are principal suppliers of the material. Accordingly, if section 503 is retained in the

military procurement bill, *the President may not prohibit the importation of chrome from Rhodesia so long as chrome is permitted from Russia or other Communist nations.*" *Id.* at S 15590.

He further argued that

"it seems to me that this issue should be decided on the basis of our national interest—on the basis of the wisdom of becoming dependent upon Communist nations as a source of materials essential to the defense of our Nation.

* * *

"Thus, the issue is joined—ideology, supported by U.N. Security Council sanctions, as opposed to our national security.

"*The section under consideration does not require the United States to scuttle the United Nations embargo against all trade with Rhodesia.* I wish that it did. Instead, the section deals only with importation of strategic materials which we freely purchase from Communist nations. Shall we permit the U.N. Security Council to dictate to this Nation in a manner to affect adversely our national security? Heaven forbid.

"Turning now to the ideological and moralistic arguments, I cannot understand why, if there are no ideological and moral objections to trade with China, Russia, and other Communist nations, there should be such objections to trade with Rhodesia when it is in our national interest to do so." *Id.*

After debate, the Fulbright Amendment was first passed 45-43. *Id.* at S 15594. However, a motion to reconsider was then passed, 39-38. *Id.* at S 15595-96.

Pursuant to the motion to reconsider, Senator Fulbright's Amendment was brought to a vote on October 6, 1971, at which time it was rejected, 44-38. *Id.* at S 15975-76.

One amendment to Section 503 which was adopted was offered by Senator Brock. It delayed the effective date of the bill until January 1, 1972. The purpose of this amendment was to give the British a little extra negotiating time. *Id.* at S 15991.

The Military Procurement Act, H.R. 8687, then passed the Senate on October 6, 1971. *Id.* at S 16003.

E. *House Floor Action*

The House on October 19, 1971, then took up the question of whether it would agree to the Senate revision of its bill. As passed by the Senate, the bill included not only the Byrd Amendment but also the Mansfield Amendment to withdraw all U.S. forces from Indochina within six months.

The motion by Congressman Hebert to send the bill to conference was agreed to without extensive debate. *Id.* at H 9715.

Congressman Arends then moved that the House conferees be instructed not to agree to any portion of the text of the Senate Amendment not germane to the House bill, H.R. 8687. If adopted, this motion would in effect have instructed the House conferees not to agree to either the Mansfield or the Byrd Amendments. *Id.*[4]

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[4] The Legislative Reorganization Act of 1970 extended the House germaneness rule, which requires that amendments to bills be germane to the subject matter of the bill, to limit the authority of House conferees to act on Senate amendments which would, if made in the House, be considered non-germane and subject to a point of order:

> "No amendment of the Senate which would be in violation of the provisions of Clause 7 of Rule XVI, if such amendment had been offered in the House, shall be agreed to by managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment." Pub. L. No. 91-510, § 126 (Oct. 23, 1970).

Although Congressman Arends' motion on its face related to the technical question of germaneness, most of the debate which followed pertained to the merits of the Mansfield or Byrd Amendments. After debate the motion to instruct was defeated by a vote of 215-192. *Id.* at H 9728.

F. *Senate-House Conference Action*

The Senate-House conferees met and approved Section 503 virtually intact, except that in deference to the House germaneness rule, they entitled the Section as an amendment to the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. § 98, a defense-related law, instead of the U.N. Participation Act. The Conference Report on this matter states, in full text:

"CHROME AND THE NATIONAL STOCKPILE

"Section 503 of the Senate amendment contains language designed to remove the embargo on the importation of chrome ore from Rhodesia.

"The language of Section 503, as added by the Senate, would amend the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)) by adding the following new language:

"On or after January 1, 1972, the President may not prohibit or regulate the importation into the United States pursuant to this section of any material determined to be strategic and critical pursuant to section 2 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a), which is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-

dominated countries or areas is not prohibited by any provision of law.

"Stated very simply, the language provides that the President cannot prohibit imports of a strategic material from a free world country if importation of such material is permitted from a Communist-dominated country.

"The issue involved in the Senate language is whether the United States need for chrome ore, both from an economic and national security standpoint, should be subordinated to the policy position established by the United Nations in its sanctions against Rhodesia.

"The United Nations Security Council, for the first time in the history of the United Nations, on December 16, 1966, imposed mandatory economic sanctions on Rhodesia. The country's primary exports— asbestos, iron ore, *chrome ore*, pig iron, sugar, tobacco, copper, and meat and meat products were placed on the selective sanctions list. The effective date of the sanctions order was January 5, 1967.

"On May 29, 1968, the United Nations Security Council voted to broaden the sanctions by imposing a virtual total embargo on all trade. On March 18, 1970, the Security Council reaffirmed existing sanctions and called on member states to enforce them more strictly.

"The President of the United States, on January 5, 1967, issued an Executive Order, Number 11322, which effectively implemented the economic embargo adopted by the Security Council of the United Nations.

"The United Nations Security Council Sanctions Committee, in a report published in June 1970, reported

that it received *21 complaints, all from the United Kingdom, of violations involving chromite and ferrochrome shipments from Rhodesia to France, Japan, Netherlands, Italy, Spain, West Germany and the United States.* The U.S.S.R. has identified Red China as another customer for Rhodesian material. Mozambique and the Republic of South Africa did not observe the sanctions from the outset and have helped to facilitate the exportation of Rhodesian chrome.

"The principal impact of the economic embargo on imports from Rhodesia is the inability of the United States industry to import chrome ore."

"Chromium is a strategic mineral essential to the production of steel. It is not produced in the United States.

"There are legitimate and important national security considerations involved in evaluating continuation of our current reliance on the Soviet Union for more than 60 percent of our national needs for a strategic and critical material like chrome. *While there is currently a surplus of chrome in the national stockpile of critical materials, the surplus is not large enough to meet U.S. needs for very long and further dissipation of the stockpile would be damaging to the national security.* Furthermore, it would defeat the very purpose of the stockpile if the United States were to rely on the stockpile as a major source of chrome in the future as it has in recent years.

"As the dominant world supplier of chrome, the Russians have driven the price from a presanction level of about $25 per ton up to present levels of $72 per ton. Thus, the present price is 288 percent of the presanction price, according to U.S. Bureau of Mines figures.

"Foreign producers of stainless steel, who may benefit from Rhodesian sanctions (by virtue of a capability

of securing lower cost Rhodesian ore in violation of the sanctions) have increased their penetration of U.S. markets. Imports of specialty steels are at an all-time high—22% of the total domestic market in the first quarter of 1971. For some individual specialty steels, the penetration is even greater; 35 percent of stainless cold rolled sheets, 68 percent of the market for stainless wire rods, and 54 percent for stainless wire. The imports have a direct effect on domestic employment and production in the specialty steel and the ferroalloy industries.

"Discussion of the Senate position on this matter reflected the general consensus that continued observance of the U.N. imposed embargo against the importation of chrome ore from Rhodesia adversely affects the national interests of the United States in that it—

"(a) makes the United States dependent upon the Soviet Union as a major source of a critical defense material,

"(b) places U.S. steel producers in a very unfavorable competitive position in both the domestic and international market,

"(c) contributes directly to unemployment in the U.S. steel industry, and

"(d) substantially increases pressure to reduce the amount of chrome ore maintained in the national stockpile.

"In view of these considerations, the House agreed to accept the Senate provision on this subject. However, consistent with the objectives of the House-Senate conferees on this matter, the Senate conferees agree to accept House language which places this statutory change in the Strategic and Critical Materials

Stockpiling Act (50 U.S.C. 98)." S. Rep. No. 92-447, 92d Cong., 1st Sess. 21-23 (1971).

G. *House Action on Conference Report*

On November 10, 1971, the House considered the Conference Report on H.R. 8687. The questions raised by the House germaneness rule were solved by the adoption of House Resolution 696, which authorized the waiving of all points of order under the germaneness rule and provided that separate votes could be demanded on the Mansfield Amendment, the Byrd Amendment, or the other nongermane amendment, following debate. 117 Cong. Rec. H 10855-59. Congressman Fraser, Chairman of the Subcommittee on International Organizations and Movements of the Foreign Affairs Committee, who had previously chaired the House hearings on H.R. 5445, the House counterpart to the Byrd Amendment, demanded a separate vote on Section 503. *Id.* at H 10859. Mr. Fraser's remarks make clear that he realized that the intent of the bill was to permit the importation of Rhodesian chrome ore. Thus, he stated:

> "Mr. Speaker, let me dispose of certain issues which have been raised along the way. These sanctions are being undertaken by the U.S. government by the President pursuant to international treaty obligations. . . . If we accept this nongermane amendment we will join South Africa and Portugal and be the third country to openly ignore their international treaty obligations.
>
> "*It is abundantly clear that if we pass this provision and begin to import chrome ore from Rhodesia that we will be in violation of international law.*
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> • • •
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> "There is no shortage of chrome ore. In fact, we have a stockpile that is in excess of our needs, and part of this stockpile is being released for domestic consumption." *Id.* at H 10859-60.

He concluded:

> *"If there should be an international emergency of some kind, of course, then we can change whatever restrictions we have on importations from Rhodesia.* But there is no such emergency. We have an excess in our stockpile so I believe that this House should support the President and the Secretary of State who have asked that we turn this amendment down and stay in compliance with our international obligations." *Id.* at H 10860.

Congressman Collins of Texas, the sponsor of H.R. 5445, spoke in support of Section 503. He stated, *inter alia:*

> "All that this bill does is to set the law straight. This is to do what is lawful. I agree with my colleague that it should be done according to the terms of the law. *It will amend the United Nations act and states that if a Communist country can send goods into the United States that a free country can send goods into the United States." Id.*

Among those opposing the bill was Congressman Dellums, a plaintiff in this case. Indicating his then understanding of the bill, he stated:

> "shortly we will vote upon an amended version of the Byrd Amendment that would end the embargo on Rhodesian chrome. I join with the gentleman from Minnesota and my colleagues of the Congressional Black Caucus in urging the House to defeat this amendment that would put us in violation of our international legal obligations and which can only be interpreted as a victory for the forces of racism and reaction." *Id.*

Further debate centered on the question of the need of the United States for Rhodesian chrome, the price of Rus-

sian chrome, the impact of Rhodesian chrome on the U.S. stainless steel industry, and the need to live up to our obligations to the United Nations.

Following debate, there was a roll call vote on the question whether the House should agree to the language contained in Section 503 of the Conference Report. Section 503 was approved, 251-100. *Id.* at H 10865.

In addition to Congressman Dellums, most of the Congressional plaintiffs herein voted against Section 503. However, plaintiffs Diggs, Conyers and Hawkins were reported as "not voting." *Id.*

H. *Senate Action on Conference Report*

The Senate considered the Conference Report on November 11, 1971. In the only statement made with respect to Section 503, Senator Javits said:

> "Mr. President, I shall vote to reject the conference report on the military procurement authorization bill, and I urge my colleagues to do likewise. I believe that the amendment which has the effect of forcing the President to violate the United Nations sanctions against Rhodesia, sanctions which the United States voted for in the Security Council, is most unwise and constitutes contempt for international law. I feel very strongly that this is a matter of basic principle of international law and the posture of the United States with respect to the United Nations and the traditional U.S. role of world leadership in support of world law and in support of the United Nations." *Id.* at S 18297.

The Senate then agreed to the Conference Report by a vote of 65-19. *Id.* at S 18298.

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The President then signed the bill on November 17 17, 1971, and, by its terms, the Byrd Amendment became le law on January 1, 1972.

As enacted, the Byrd Amendment reads:

> "SEC. 10. Notwithstanding any other provisvision of law, on and after January 1, 1972, the Presidendent may not prohibit or regulate the importation into the he United States of any material determined to be strategtegic and critical pursuant to the provisions of this Act, it, if such material is the product of any foreign country oy or area not listed as a Communist-dominated country oy or area in general headnote 3(d) of the Tariff Schedulesles of the United States (19 U.S.C. 1202), for so long as ts the importation into the United States of material ol of that kind which is the product of such Communisthist-dominated countries or areas is not prohibited by ar any provision of law." Pub. L. No. 92-156, § 503.

ADDENDUM B

AFFIDAVIT OF STANLEY L. SOMMERFIELD
filed April 27, 1972

UNITED STATES DISTRICT COURT
for the District of Columbia

Charles Coles Diggs, Member of the House of Representatives, et al Plaintiffs, v. John B. Connally, Secretary of the Treasury Department, et al Defendants.	Civil Action 773-72

AFFIDAVIT

Stanley L. Sommerfield, being duly sworn, deposes and says:

1. I am the Acting Director of the Office of Foreign Assets Control, United States Department of the Treasury.

2. In my official capacity I was informed by my superiors of instructions sent by the President to the Secretary of the Treasury directing the Treasury Department to take the necessary action to permit the importation of strategic and critical materials of Rhodesian origin, as called for by the Byrd Amendment.

3. I was directed by my superiors to take the necessary action. I did so by issuing an amendment to the Treasury's Rhodesian Sanctions Regulations (31 CFR 530.518) and by

causing said amendments to be published in the Federal Register (F.R. Doc. 72-1199).

/s/ STANLEY L. SOMMERFIELD
Stanley L. Sommerfield

Acting Director
Office of Foreign Assets Control

Subscribed and sworn to before me
this 27th day of April 1972

/s/ YVONNE B. JESSICK
Notary Public

My commission expires 10/14/74